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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2003 from the Permanent Mission of Germany to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Germany to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and, in reference to the Chairman's note verbale dated 4 March 2003, has the honour to hereby transmit Germany's report in accordance with paragraph 6 of resolution 1455 (2003).

03-35215 (E) 200503

Annex to the note verbale dated 16 April 2003 from the Permanent Mission of Germany to the United Nations addressed to the Chairman of the Committee

Report of Germany required pursuant to paragraphs 6 and 12 of resolution 1455 (2003)

I. Introduction

Germany strongly condemns all acts of international terrorism, regardless of the motives behind them. In this context, Germany attaches great importance to the complete implementation of United Nations Security Council Resolutions concerning measures to combat international terrorism, including those imposing restrictive measures against the Taliban, Al Qaida and Osama bin Laden, namely UNSCRs 1267 (1999), 1333 (2000), 1390 (2002), 1452 (2002), and 1455 (2003). Pursuant to paragraphs 6 and 12 of UNSCR 1455 (2003), Germany herewith presents its report on the implementation of the aforementioned United Nations Security Council Resolutions. This report should be read in conjunction with its reports to the United Nations Security Council's Counter Terrorism Committee (CTC, S/2002/11 and S/2002/1193), which provide detailed accounts of Germany's actions in the fight against terrorism.

1. *Please provide a description of activities, if any, by Usama Bin Laden, Al-Qaida, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.*

Please see the responses to questions 4, 5 and 7.

II. Consolidated List

2. *How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?*

The financial sanctions were implemented by Council Regulation (EC) No. 881/2002 of 27 May 2002, which is binding in Germany and in the other member states of the European Union. This Regulation is updated regularly to reflect changes in the List, cf. Appendix III. For details cf. questions 9 and 20. The answer to question 15 provides an account of how the travel ban is implemented in Germany. The arms embargo is implemented by EU Common Position No. 2002/402/CFSP, which places a binding obligation on EU member states. At national level, it is implemented in administrative terms by denying the requisite licences.

The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) regularly circulates the names of the persons and entities designated in the Consolidated List to all credit institutions and financial services institutions in Germany. If an institution has a business relationship with and, in particular, holds accounts in the name of any of the persons or organizations named in the list, it has to notify the BaFin without delay by sending a detailed report. For a detailed list of the respective BaFin circulars cf. question 11.

The task of the German customs administration in this respect is to monitor the import, export and transit of goods to ensure that no economic resources are made available to the persons and entities designated in the Consolidated List. The Federal Ministry of Finance has issued detailed rules for this purpose: in the course of their surveillance of cross-border goods traffic, customs offices ensure that no direct or indirect supplies of goods are made to or by the listed persons and entities. To this end, updated lists are transmitted electronically to customs offices. When suspicious circumstances are identified, the appropriate customs investigation office responsible for dealing with criminal offences related to foreign trade is notified accordingly and decides what further action is to be taken (instigation of criminal proceedings, seizure of the goods).

Where no clear evidence of any link to Osama bin Laden, the Al Qaida network and the Taliban can be identified in accordance with the lists but such links cannot be completely ruled out, the customs office will decline to carry out import/export clearance and will require the submission of more detailed documentation, in particular documents identifying the persons and entities in question. These documents will then be submitted to the responsible security authorities for examination.

The penalty for contravention of the applicable legal provisions is a term of imprisonment of between two and fifteen years pursuant to Section 34 paragraph 4 of the Foreign Trade and Payments Act in conjunction with Council Regulation (EC) No. 881/2002.

3. *Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.*

The main problem continues to be the lack of essential basic personal data needed to positively identify persons on the list (surname, given name, date of birth, if possible country/city where born, nationality, if possible also aliases and reporting authority). This information is a prerequisite for inclusion in the Schengen Information System (SIS) and for refusal of entry or transit based on national border authorities' data files. Complete basic personal data are not available for the overwhelming majority of suspected terrorists listed in UN Security Council Resolutions 1267/1333/1390 and 1455.

Due to the insufficient information contained in the lists regarding organizations and especially persons, the customs authorities face serious difficulties in clearing goods. In a number of cases, goods (used cars and trucks) were being sent to persons in Afghanistan whose names were identical or similar to those listed – particularly on the Taliban list. The Customs Criminological Office, as the agency responsible for monitoring external trade, was informed of these suspicious cases. As the Consolidated List contains no further identifying data on the persons in question, such as home address or date of birth, the security authorities were asked to check further. Their enquiries have so far been negative in every case, i.e. they have no relevant information about the recipients of the shipments either.

4. *Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.*

and

7. *Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.*

The Taliban maintained an office in Germany that functioned as a kind of diplomatic mission. Following UN Security Council Resolution 1333 of December 2000, this mission was closed by the responsible security authorities in early March 2001. There are no indications that a new Taliban office has opened or that other Taliban structures are still in place within German territory.

Furthermore, there is no evidence of Al Qaida structures in Germany. Individuals known to be close to or linked with Al Qaida are under surveillance by the German security authorities according to their legal areas of responsibility.

Mamoun DARKAZANLI, whose name is listed, is currently the subject of an investigation in Germany. Mamoun DARKAZANLI is also listed in Annex I of Council Regulation (EC) No. 881/2002, freezing the funds and economic resources of the persons and entities listed in its Annex I. Mamoun DARKAZANLI's accounts have been frozen accordingly.

Germany has supplied the necessary information about the accused persons it has submitted for inclusion in the List (Said BAHAJI, Ramzi Mohamed Abdullah BINALSHIBH, Mounir EL MOTASSADEQ and Zakarya ESSABAR).

5. *Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Usama Bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.*

The Federal Public Prosecutor has initiated a total of 66 investigations regarding persons linked to the Taliban/Al Qaida. Detailed information regarding ongoing investigations cannot be provided here.

The Federal Government is checking on the possibility of submitting additional names to the List beyond the four already reported by Germany (see response to questions 4 and 7).

6. *Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate as appropriate.*

No.

7. *See above after question 4.*

8. *According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al-Qaida training camps established in your territory or in another country.*

Immediately following terrorist attacks in the United States on 11 September 2001, the Federal Government enacted a number of operational emergency measures allowing it to react flexibly to the changed security situation.

The first anti-terror package of legislation was aimed at extending its powers to ban extremist religious organizations and ideological associations under the Act Governing Private Associations – discontinuing what is known as the religious privilege in that Act (effective as of 8 December 2001). According to the new law, religious or ideological associations may be banned if their aims or activities are directed at violating the law, or when they are directed against the order enshrined in the constitution or against the ideal of international understanding. Discontinuing the religious privilege in no way implies an anti-religious or anti-Islamic stance. Religious or ideological organizations that practise their beliefs in conformity with the German legal order are not subject to a ban. In addition, the new Ordinance on the Reliability of Staff Employed at Airports contains regulations on an obligatory procedure for carrying out background security checks, particularly on personnel who work in restricted areas of airports. The Ordinance makes annual security checks obligatory for airport and airline employees, in particular those whose jobs require them to have access to security-relevant airport areas. The Ordinance requires, among other things, the extensive participation of security authorities and regular queries to the Federal Central Criminal Register, and defines the criteria for background security checks.

A further step in this direction was taken on 1 January 2002 when the Counter-Terrorism Act came into effect. This Act expands the powers of the security authorities, among other things by giving the Federal Criminal Police Office the power to initiate investigations in serious cases of data sabotage. The Federal Office for the Protection of the Constitution was granted powers to gather information from credit and financial institutions in order to investigate capital flows and to gather information from aviation, postal services, and telecommunications companies. The power to gather banking and telecommunications information was also given to the Federal Intelligence Service.

In addition, the Counter-Terrorism Act also contains stricter measures with regard to legislation on foreigners, including, among other things, the denial of visas or residence permits in case of a threat to security or to the liberal and democratic order, as well as the regular expulsion of foreigners involved in terrorist networks.

Significant changes to the law on the Central Aliens Register have resulted in improved access to information in that register. The visa database, which in principle currently contains only information regarding visa applications, will be expanded to contain records on visa decisions in order to improve checks of entry traffic. Police authorities will have improved access in case of non-specific threats, such as in the context of routine identity checks, so that they can immediately determine whether a foreigner is living in Germany legally. The possibility of accessing information on groups will be extended to persons with a consolidated residence status and will be permitted also in cases of non-specific threats. In order to increase the effectiveness of their efforts, the security services will be able to call up the entire database automatically. These changes to the Central Aliens Register come into effect on 1 July 2003.

Furthermore, the Counter-Terrorism Act extends the grounds for banning associations under the Act Governing Private Associations, making it possible to take action against foreigners' associations that support violent or terrorist organisations abroad, contribute to the creation of parallel societies or hinder peaceful coexistence in Germany. The legislation governing passports and identity

cards has been amended to improve the computer-aided identification of individuals based on identity papers and to prevent persons from using the identity papers of someone of a similar appearance. In addition to a photograph and signature, another biometric feature may be incorporated into passports and identity cards – also in encrypted form; details will have to be specified in a special federal law. This will make it possible to determine whether the identity of the person in question matches up with the original data stored in the document.

Section 129b of the Penal Code (StGB), effective as of 30 August 2002, extends the criminal offence of forming terrorist organizations (Section 129a StGB) to organizations based outside the country; the previous law required the existence of an independent branch organization within Germany for prosecution. Extending the criminal offence to include the founding, membership and support of a terrorist organization has created a tool geared to actual needs and to deal with the new kind of threat posed by international terrorism as demonstrated by the attacks in the US and Tunisia.

III. Financial and Economic Asset Freeze

9. *Please describe briefly:*

   – *the domestic legal basis to implement the asset freeze required by the resolutions above*

   – *any impediments under your domestic law in this context and steps taken to address them.*

Germany has implemented UNSCR 1390 (2002) within the EU framework. The asset freeze required by the Resolution was implemented by the EC Regulation No. 881/2002 of 27 May 2002.

Beyond the EC Regulation, it is also possible in Germany to take preliminary national measures to restrict capital and payment transactions involving persons/organizations which will be notified for listing to the sanctions committee. Such measures have been taken several times to bridge the time gap between the notification of a person/organization to the sanctions committee and the implementation of the decision of the sanctions committee by means of an amendment to EC Regulation No. 881/2002.

There are no impediments under national law in this context.

10. *Please describe any structures or mechanisms in place within your Government to identify and investigate Usama bin Laden, Al-Qaida or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.*

Member states of the Financial Action Task Force on Money Laundering (FATF) have undertaken to enact in national law the Eight Special Recommendations on Terrorist Financing, adopted at the FATF special meeting held in Washington in October 2001, by June 2002. Even before that date, Germany had in place comprehensive rules and provisions on fighting money laundering, these being the Money Laundering Act (Geldwäschegesetz, GwG) and the Banking Act (Kreditwesengesetz, KWG). Germany took further legislative measures to

implement the FATF recommendations when it adopted the Fourth Financial Market Promotion Act (Viertes Finanzmarktförderungsgesetz), which took effect on 1 July 2002, and the Money Laundering Prevention Act, which became effective on 15 August 2002.

The Fourth Financial Market Promotion Act introduced a new Section 24 c into the Banking Act. This section regulates what is called the automated retrieval procedure for account master data. The aim is to enable in particular the supervisory authorities in the banking sector to counteract money laundering and the funding of terrorism with queries carried out centrally. Queries show at a glance at which banks or institutions a given person or organization has accounts. This was one of the essential basic demands made by the criminal prosecution and investigation authorities in light of the current threat situation. The amendment to the Banking Act will take effect on 1 April 2003. The banking sector is preparing its technical implementation at present.

With the Money Laundering Act of 15 August 2002, the Federal Government has adopted landmark legislation in the fight against international crime and the funding of terrorism.

The focal areas are as follows:

- using "money laundering tools" to fight the funding of terrorism based on what was decided at the FATF special meeting held in Washington in October 2001.
- designing the German Financial Intelligence Unit (FIU) at the Federal Criminal Police Office in order to improve cooperation with FIUs abroad: this includes, above all, building clearing and analysis capacities within the unit and making arrangements for the exchange of data with FIUs abroad. To this end, banks and financial authorities also have to submit reports on suspicious transactions which may involve money laundering and the funding of terrorism to the FIU.
- making use of the experience gathered with the Money Laundering Act so far: above all, the increased use of new media for the conduct of financial transactions is taken into account; also, red tape has been reduced.
- including new professions such as real estate agents, lawyers, notary publics, tax consultants and qualified auditors in the groups of persons governed by the Money Laundering Act in line with the EU Money Laundering Directive, which took effect on 28 December 2001.
- incorporating a new Section 25 b into the Banking Act; this provision is intended to implement the FATF Special Recommendation No. 7 on fighting the funding of terrorism. It provides that where non-cash transactions are carried out with states outside the European Union the financial institutions have to use data sets containing full and accurate information (name, address, and account number of client).

As for the rest, we refer to the German National Report regarding Section 6 of UNSC Resolution 1373 of December 2001 (S/2002/11 item 1) and the supplemental German National Report of October 2002 (S/2002/1193 item 1).

Germany cooperates closely with other states, e.g. within the European Union, the Council of Europe, OSCE, G8 and FATF. In this respect and as regards cooperation

at the national level, we refer to the German National Report (S/2002/11 in particular items 2 b, 3 a/b/c).

11. *Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al-Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.*

Mechanism of identification of bank account holders and verification of their antecedents:

A central requirement of the Money Laundering Act (Geldwäschegesetz, GwG) is the establishment of personal identity on the basis of documentation. In accordance with Section 1 (5) of the GwG, customer identity is established by verifying by means of a valid identity card or passport the name, date and place of birth, nationality and address. The type, number and issuing authority of the identity document must be recorded. In accordance with Section 9 (1) of the GwG, a record must be kept of these particulars, where possible by making a copy of the documents submitted for the purpose of establishing identity.

The know-your-customer principle and the requirement that personal identity shall be established on the basis of documentation mean that individuals must in general be present in person, this being the only means of verifying their identity. The identity of legal entities can be established by reference to an official publication or official register. If a credit institution is unable for good reason, especially in direct banking, to establish the customer's identity, this identification can be carried out on behalf of the institution by reliable third parties (such as other banks, insurance companies providing life assurance policies, notaries public, Deutsche Post AG, an embassy or a consulate in the case of EU countries). Responsibility for correct and complete identification in accordance with Section 1 (5) of the GwG rests with the original credit institution.

Computerized system for the retrieval of key account data in accordance with Section 24c of the Banking Act (Kreditwesengesetz, KWG):

This provision stipulates the introduction of a modern data retrieval system to give the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) access by electronic means to the key account data held by banks. To this end, banks are obliged to hold these data available in a central database (name and account number of the account-holder, name of a further person authorized to draw on the account and of an economic beneficiary other than those persons). Preparations are at present under way for installing the computerized retrieval system. Access to the data will be possible as from April 2003. This will enable the BaFin to take swift action to counter money laundering, terrorist financing, illicit underground banking and the unlicensed provision of banking and financial services. In addition to banking supervisory measures, this also embraces freezing the financial assets of specific persons and organizations to counter terrorism on the basis of appropriate UN Security Council Resolutions and EU Regulations. Furthermore, financial market supervisory authorities in third countries, investigating authorities and courts, as well as the authorities responsible

for restricting capital and payment transactions in accordance with the Foreign Trade and Payments Act, are entitled to request information.

Particular organizational duties of institutions to counter money laundering in accordance with Section 25a of the KWG:

This provision places institutions under an obligation to deploy an internal security system that is not linked to suspicious transactions in order to review business operations according to risk groups and conspicuous features and to develop adequate business- and customer-related security systems. Implementing the international know-your-customer standard, the provision obliges institutions to be active in conducting investigations focusing on the categories of business relations and risk groups which experience has shown to be susceptible to abuse for money laundering, financing of terrorism and fraud purposes. To this end, they must make use of computer-aided systems which permit account profiling on the basis of parameters taking into consideration the specific business structure of the institution. Banks must themselves decide on the basis of their own risk structure what business relationships and transactions are to be regarded as conspicuous and included in the investigation.

Organizational duties of credit institutions in accordance with Section 25b of the KWG:

This provision stipulates that credit institutions carrying out cashless payment transactions with countries outside the European Union must ensure that the customer's transaction data can be recorded and transmitted and that incomplete transaction data can be identified and if necessary completed. In the event of investigations, the aim of this provision is to prevent a break in the "paper trail" which would mean that transactions serving money laundering or terrorist financing cannot be traced back to the originator by the receiving institution and by investigating and supervisory authorities.

Implementation of the Eight Special Recommendations of the Financial Action Task Force on Money Laundering (FATF):

The member countries of the FATF, of which Germany is one, were committed to transpose into national law by June 2002 the Eight Special Recommendations to combat the financing of terrorism. Before specific national measures against the financing of terrorism became effective, Germany already had a comprehensive set of regulations to counter money laundering in place in the form of the Money Laundering Act (Geldwäschegesetz, GwG) and the Banking Act (Kreditwesengesetz, KWG). In the Fourth Financial Market Promotion Act that came into effect on 1 July 2002 and the Money Laundering Prevention Act of 8 August 2002, Germany has taken further legislative steps to implement the FATF recommendations to combat money laundering and the financing of terrorism.

With the Money Laundering Prevention Act of 8 August 2002 Germany has fulfilled all of the Eight Special Recommendations. The 1999 UN International Convention for the Suppression of the Financing of Terrorism is not yet ratified, but the actual legal situation in Germany already fulfils all Convention requirements.

Oversight of banks and other financial institutions by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin):

The BaFin which supervises banks, insurance companies and other financial institutions in Germany has sent binding circulars to all supervised institutions, also listing the specific duties of implementation for these institutions in relation to countering the financing of terrorism. This is a list of the relevant BaFin circulars on money laundering and the financing of terrorism. The circulars are attached to this report (Appendix IV):

- Safeguards to prevent the misuse of credit and financial services institutions for money laundering purposes in connection with persons and organizations suspected of involvement in the terrorist attacks on institutions in the US (Rundschreiben_08_2001)
- Safeguards to prevent the misuse of credit institutions and financial services institutions for money laundering purposes in connection with the terrorist attacks of 11 September 2001 on institutions in the US; Request for information under Section 44 (1) of the Banking Act (Rundschreiben_13_2001_3terNachtrag)
- Request for information under Section 44 (1) of the Banking Act in connection with the terrorist attacks of 11 September 2001 on institutions in the US (Rundschreiben_15_2001)
- Request for information under Section 44 (1) of the Banking Act in connection with the terrorist attacks of 11 September 2001 on institutions of the US (Rundschreiben_02_2002)
- Request for information under Section 44 (1) of the Banking Act in connection with the action to combat the financing of terrorism (Rundschreiben_06_2002)
- Safeguards to prevent the misuse of credit institutions and financial services institutions for money laundering purposes in connection with the terrorist attacks of 11 September 2001 on institutions in the US; 3rd Supplement to the so-called Control List (Rundschreiben_11_2002)
- Request for information under Section 44 (1) of the Banking Act in connection with the action to combat the financing of terrorism (Rundschreiben_12_2002)

12. *Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities." Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:*

- *identification(s) of the person or entities whose assets have been frozen;*
- *a description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);*
- *the value of assets frozen.*

A total number of 10 accounts amounting to EUR 4,935.75 are currently frozen under the above-mentioned resolutions.

13. *Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen*

as being related to Usama Bin Laden or members of the Al-Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.

Germany has not released any funds pursuant to UNSCR 1452 (2002).

14. *Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000), 1267 (1999) States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to Listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:*

– *The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al-Qaida or the Taliban. This should include an indication of the types of institutions informed and the methods used.*

– *Required bank-reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.*

– *Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.*

– *Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds, etc.*

– *Restrictions or regulations, if any, applicable to alternate remittance systems such as -- or similar to -- "hawala", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.*

Banks and other financial institutions (for example insurance companies) are informed by circulars of the German Central Bank (Deutsche Bundesbank) and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) when EC regulations or national freezing orders enter into force.

When facts become known to institutions from which it may be inferred that a financial transaction serves the purposes of criminal money laundering or the financing of a terrorist organization, Section 11 of the Money Laundering Act (Geldwäschegesetz, GwG) obliges them to report such facts without delay to the responsible criminal prosecution authorities. Sections 13 and 16 of the GwG impose the same obligation on the financial market supervision authorities.

Section 11 of the GwG was amended by the BaFin Guidelines of 30 March 1998 concerning measures to be taken by credit institutions to combat and prevent money laundering (see Appendix V). In part VI.23.-31., the procedure in cases of suspicion is stipulated concerning the duty to report suspicious transactions, internal cases of suspicion, the organization of the reporting procedure, formal requirements and the termination of the business relationship.

Under Section 31b of the Fiscal Code (Abgabenordnung, AO) the obligation to report suspicious transactions is extended to the revenue authorities. This renders the fight against money laundering and terrorist financing more effective, as the revenue authorities in particular are likely to come across indications of money laundering in fulfilling their official functions.

Council Regulation No. 2368/2002 of 20 December 2002 on implementing the Kimberley Process certification scheme for the international trade in rough diamonds requires that the import and export of rough diamonds into or from the territory of the Community be made subject to the certification scheme.

Any person wishing to conduct banking business or provide financial services in Germany must have written authorization from BaFin. Persons conducting banking business or providing financial services without such authorization (underground banking, hawala banking) render themselves liable to prosecution in accordance with Section 54 (1) no. 2 of the Banking Act (Kreditwesengesetz, KWG). In accordance with Section 1 paragraph 1 of the KWG, a licence is also required for the execution of cashless payment and clearing operations (giro business). Financial services also requiring a licence and subject to ongoing supervision are in accordance with Section 1 (1a) of the KWG financial transfer business (alternative remittance services), foreign exchange and credit card business.

In Germany, non-profit organizations exist mostly in the form of registered associations (e.V.). They can be exempted from paying corporate income tax (Section 58-61 of the Fiscal Code – Abgabenordnung, AO). The non-profit character of an association is only controlled if it requests exemption from corporate income tax.

IV. Travel Ban

15. *Please provide an outline of the legislative and /or administrative measures, if any, taken to implement the travel ban.*

and

16. *Have you included the names of the listed individuals in your national "stop list"? Please briefly outline steps taken and any problems encountered.*

As regards the implementation of the international obligation arising from UN Resolution 1390 aimed at preventing the entry and transit of terrorists included in the list of UN Security Resolutions 1267, 1333 and 1455, the above-mentioned persons have been included in the data files on foreigners who are to be refused entry. We draw attention to the fact that a person who has been included in such a list may only be refused entry and transit if he or she can be clearly identified on the basis of the information given in the list (cf. reply ad question 3.).

Furthermore, persons for whom sufficient information on identification is available have been entered into the Schengen Information System (SIS) for refusal of entry.

The relevant national data files can be accessed by all offices charged with border control tasks in the Federal Republic of Germany; the SIS can be accessed by all police and border police authorities of the Schengen contracting states.

17. *How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?*

The list is transmitted to the central unit in charge of border control whenever it is updated. The data of persons for whom an alert has been issued for the purposes of refusing them entry is automatically included in the search files of the police information system, and can therefore be retrieved by any border control office.

18. *Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information as appropriate.*

So far, none of the listed individuals have been stopped at our borders.

19. *Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?*

Please see the responses to questions 3 and 16.

If the information available on the person makes it possible to identify him/her clearly, the person is entered into the Schengen Information System (SIS). Information is requested from the SIS whenever a visa application is submitted. The application is rejected if the person is listed in the SIS for refusal of entry.

Other persons who are not clearly identifiable are listed in a national border search list. In the case of certain nationals, the visa application is passed on to the security authorities which compare the application with the national border search list. In the case of a match, the visa application is rejected provided it is possible to identify the person in question with the help of further criteria.

All other persons on the list who cannot be clearly identified due to incomplete data cannot be recognized by German missions abroad.

To date, no-one named on the list has applied for a visa at a German mission abroad.

V. Arms Embargo

20. *What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?*

The export of military weapons is subject to a comprehensive licensing system. A licence for the export of military equipment will only be granted for export to state entities in the recipient country, i.e. the applicant for an export licence has to produce an official end-use-certificate signed by the armed forces or the police forces of the country of final destination. A licence will only be issued if the export is in line with the Federal Government Policy Principles for the export of war weapons and other military equipment. One reason for denying a licence is, for example, the risk of diversion of the equipment to recipients other than those stated

in the application. If a government has produced false end-user certificates all licence applications for that country will be rejected until further notice.

The export of dual-use-goods or technology, technical assistance related to military activities or the exports of goods eligible for the production or development of WMD are also subject to a comprehensive licensing system. Export licenses will be denied if there is any risk of diversion to terrorist end-users.

21. *What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them.*

A violation of the arms embargo, for example an export to a listed person/organization is subject to up to five years' imprisonment according to Section 34 (1) of the Foreign Trade and Payment Act (Außenwirtschaftsgesetz).

22. *Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.*

Concerning war weapons, there has been a far-reaching licensing requirement for practically all procurement and brokering activities (Section 4 (a) of the War Weapons Control Act) since 1978. Given the very restrictive licensing practices of the Federal Government, there are de facto no arms dealers in the Federal Republic of Germany. There is no central register of "authorized" arms dealers.

In accordance with Section 7 (1) (2) of the Weapons Act (Waffengesetz), the practice of commercial arms trading and brokering with firearms and ammunition requires a permit and therefore the trader's registration with the authorities, even when the firearms are not located in the area in which the Act is valid, the business is conducted in third countries or, where applicable, only individual procurement measures are undertaken in the area in which the Act is valid.

23. *Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?*

The manufacture and export of arms and ammunition is subject to a detailed licensing process. The respective licenses are only issued if the recipient is a state entity which declares with an official end-use certificate that the goods will be solely for their own use and will not be re-exported to any third country without prior authorization of the German licensing authority.

VI. Assistance and conclusion

24. *Would your state be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.*

Germany is willing to provide assistance to other states to help them implement the measures contained in the above-mentioned resolutions. Detailed information on

possible assistance has been provided to the Counter Terrorism Committee and its Directory of Assistance.

25. *Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime and where you believe specific assistance or capacity building would improve your ability to implement the above sanctions regime.*

As this report serves to show, Germany fully implements the Taliban/Al Qaida sanctions regime and does not see the need for specific assistance.

26. *Please include any additional information you believe pertinent.*

./.

Appendix*

I Germany's report to the Counter-Terrorism Committee (S/2002/11)

II Germany's supplementary report to the Counter-Terrorism Committee (S/2002/1193)

III EC Regulation 881/2002 and amendments

IV BaFin circulars concerning money laundering and the financing of terrorism

V Money Laundering Act – Guidelines of the Federal Banking Supervisory Office

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* The enclosures referred to in the report are on file with the Secretariat, room S-3055, and are available for consultation.

United Nations S/AC.37/2003/(1455)/11

Security Council

Distr.: General
17 April 2003

Original: English

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2003 from the Permanent Representative of Finland to the United Nations addressed to the Chairman of the Committee

The Permanent Representative of Finland to the United Nations presents her compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), and with reference to the note regarding resolution 1455 (2003) and its paragraph 6 has the honour to submit herewith the updated report of the Government of Finland on all steps taken to implement the measures imposed by paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002) (see annex).

03-35240 (E) 200503

Annex to the note verbale dated 16 April 2003 from the Permanent Representative of Finland to the United Nations addressed to the Chairman of the Committee

Report pursuant to Security Council resolution 1455 (2003)

I. Introduction

(Question 1) So far, no activities of the designated individuals or entities in Finland have been observed. Presently the designated individuals and entities are not regarded as posing a threat to Finland or Finnish interests abroad even though they may be considered to pose a minor threat to foreign interests in Finland.

II. Consolidated list

(Question 2) As a general rule, the imposition of economic sanctions and the implementation of the United Nations Security Council resolutions imposing economic sanctions fall within the competence of the European Community. The respective UN resolutions are implemented in the European Union through Council regulations which are directly applicable legislation in Finland as a Member State of the EU.

UNSC Resolution 1390(2002) as well as the relevant paragraphs of Resolutions 1267(1999) and 1333(2000) have been implemented in the European Union through Council Common Position (2002/402/CFSP) and Council Regulation (EC) No 881/2002 concerning and imposing restrictive measures against Usama bin Laden, members of the al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them. The Common Position and the Regulation have been in force as from 29 May 2002, and their copies have been submitted to the Committee together with the Note YKE0033-134, dated 29 May 2002, of the Permanent Representative of Finland to the United Nations concerning the implementation of the measures under Resolution 1390(2002).

The list of designated persons and entities attached to Resolution 1390(2002) and subsequent amendments thereto are attached as Annex I to the above-mentioned Council Regulation No 881/2002. The Regulation as well as the list and its amendments have been published in the Official Journal of the European Communities. The Commission of the European Communities is empowered to amend Annex I on the basis of determinations made either by the UNSC or by its Committee established pursuant to the SC Resolution 1267(1999).

As the Regulation and its Annex, which reproduces the list of designated persons and entities determined by the SC Committee, are directly applicable legislation in EU Member States, binding on their authorities and officials, there is no particular need to further incorporate the SC consolidated list into the national legal system or administrative structure. The Ministry for Foreign Affairs informs the competent authorities, in particular the Ministry of the Interior, Ministry of Defence, Ministry of Finance, Ministry of Trade and Industry, Finnish Frontier Guard, Financial Supervision Authority, Insurance Supervision Authority, Money Laundering Clearing House of the National Bureau of Investigation, Security Police, Consular officials, Customs, Bank of Finland as well as Finland's Bank Association, of any amendments made to the list of designated individuals and entities.

(Question 3) The financial institutions, particularly the banks, when determining whether a designated person belongs to their clientele, have encountered some difficulties with regard to the inadequate identifying information concerning designated persons with a common name. To make financial sanctions an effective tool in the fight against terrorist financing, it is necessary that the financial institutions which play a crucial role in this respect are provided with adequate means. It has also been brought to the attention of the Committee, in the discussions between the Monitoring Group established pursuant to SC Resolution 1390(2002) and the Schengen

Information Centre, that there have been similar difficulties with respect to the manner in which the designated individuals are reflected in the Schengen Information System.

(Questions 4, 5 and 7) So far, the Finnish authorities have not identified any of the designated persons in Finland and nor have they been found to have Finnish nationality or residence in Finland. Nor are the Finnish authorities aware of any names of individuals or entities associated with Usama bin Laden or members of the Taliban or al-Qaida that have not been included in the list.

(Question 6) As the implementation of the financial sanctions imposed by the UNSC falls within the competence of the European Union, the Court of the European Communities in Luxemburg has jurisdiction under the Council Regulation No 881/2002. Several individuals have filed a suit against the Commission of the European Communities and the Council of the European Union before the Court of the European Communities in Luxembourg for their inclusion in Annex I to Regulation 881/2002.

(Question 8) Chapter 34a of the Penal Code of Finland contains provisions on terrorist offences. The Chapter provides for the sentences applied to terrorist offences and their planning, to the directing of a terrorist group, to the promotion of a terrorist group, and to the financing of terrorism. The Chapter also contains a provision defining terrorist offences, a provision on the right of prosecution and a provision on corporate liability. Section 4 of Chapter 34a prohibits promotion of terrorist groups. It is applied to participation in terrorist groups, including recruitment of members. As far as recruitment of members to terrorist organizations is concerned, the relevant part of section 4 of Chapter 34a reads as follows:

> A person who, with the intention of facilitating or in the knowledge that his/her conduct will contribute to the criminal activities of a terrorist group as referred to in sections 1 and 2,
>
> 1) creates or organises the group, or recruits or attempts to recruit members to such a group,
>
> [...]
>
> shall be sentenced, where the group's activities include the commission of or an attempt to commit an offence referred to in section 1 or the commission of an offence referred to in section 2, for *promotion of a terrorist group,* to imprisonment for at least four months and at most eight years.

The promotion of a terrorist group may be punished even if an offence has not actually been committed or attempted, provided that the group has planned to commit terrorist offences. According to subsection 3 of section 7 in Chapter 1 of the Penal Code, Finnish law shall apply to an offence referred to in Chapter 34a, committed outside of Finland, irrespective of the law of the place of commission.

So far, no criminal investigations or court proceedings on the basis of the provisions of Chapter 34a of the Penal Code which entered into force on 1 February 2003 have been initiated.

III. Financial and economic asset freeze

(Question 9) As stated in Section II above, the EU regulations imposing sanctions, including those implementing the UNSC resolutions imposing economic sanctions are directly binding legislation throughout the EU. However, additional national laws or regulations are needed with respect to the sanctions to be imposed in cases where the EU regulations are infringed.

Sanctions imposed by the UNSC or the EU are implemented at the national level by virtue of the *Act on the Enforcement of Certain Obligations of Finland as a Member of the United Nations and of the European Union* ("Sanctions Act", Act No 659/1967 as amended by Acts 824/1990, 705/1997, 191/2000, 882/2001 and 364/2002). The Act provides a basis for the prompt implementation of provisions of Council sanctions regulations for cases where the regulations have been adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Union. In fact, the relevant penal provisions enter into force simultaneously with the regulation itself.

The Sanctions Act authorises the implementation of binding SC resolutions and EU sanctions imposed under Articles 60, 301 and 308 of the Treaty. While most EU sanctions so far have been implementing norms for binding UNSC resolutions, the Act also allows for the implementation of EU sanctions imposed independently from UN sanctions. Furthermore, it provides a basis for implementation of binding UNSC resolutions in the absence of a corresponding Council or Community regulation.

The Act, together with the Finnish Penal Code, provides for the sanctions and forfeitures to be imposed for violations of UNSC resolutions or Council regulations. According to Chapter 46, section 1 (11) of the Penal Code, a person who violates or attempts to violate a regulatory provision in a sanctions regulation, adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Community, shall be sentenced for a regulation offence to a fine or to imprisonment for at most four years.

So far, there have been no cases before the Finnish courts relating to the infringement of Council regulation No 881/2002 implementing SC Resolution 1390(2002).

(Question 10) - Investigation of terrorist offences, including the financing of terrorism, falls within the competence of the National Bureau of Investigation. Exchange of information takes place within the framework of relevant international cooperative bodies, in particular Interpol and Europol. The unit responsible for the preliminary investigation is the Money Laundering Clearing House which operates in close co-operation with other Financial Intelligence Units of the Bureau.

The Office of the Prosecutor General is responsible for prosecution for terrorist offences.

(Questions 11 and 14) The Ministry for Foreign Affairs is responsible for the implementation and monitoring of the financial sanctions imposed by the EU and the UNSC. In the case of EU sanctions the MFA issues a notification to be published in the Statute Book, informing of the sanctions and forfeitures to be imposed by virtue of the Sanctions Act and the Penal Code for violations of the relevant regulations. In the absence of EU decisions binding SC sanctions resolutions are implemented by an implementing decree.

After the relevant EU regulations have entered into force, the Financial Supervision Authority (FSA) and the Insurance Supervision Authority are requested to provide information to the Ministry for Foreign Affairs on any suspicious accounts or on any decisions by the institutions under their supervision to freeze accounts of designated individuals or entities, within a given period of time.

The Ministry for Foreign Affairs also informs the Ministry of Finance, Money Laundering Clearing House of the National Bureau of Investigation, Bank of Finland and Finnish Bank Association on the entry into force of the relevant regulations on financial sanctions. Banks, other financial institutions and insurance companies are requested to provide information either through their supervision body or directly to the Ministry for Foreign Affairs. When necessary, and on the basis of the information provided by the financial institutions, the Ministry for Foreign Affairs will take necessary further measures, *inter alia*, to try to obtain further identifying information on the designated individuals.

The due diligence obligation and that of customer identification set forth in the existing Act on Preventing and Clearing of Money Laundering (68/1998; hereinafter referred to as the Money Laundering Act), as well as in the Credit Institutions Act, Investment Firms Act and Mutual Funds Act, aims at ensuring that financial institutions observe strict know-your-customer rules and follow good banking practice and good securities market practice.

Financial institutions have not only an obligation to identify their customers but also a duty to know their customers' operations as well as the grounds for and purpose and reason of using the respective institution's services. Further, financial institutions are under obligation to monitor customer transactions in order to detect unusual and suspicious activities which are to be reported to the Money Laundering Clearing House. From the financial institutions' viewpoint, largely the same know-your-customer rules also apply to transactions related to the financing of terrorism.

The Government Bill (173/2002) for the amendment of the Money Laundering Act was passed in January 2003. The amendments will be ratified by the President of the Republic with effect as of 1 June 2003. The Act implements, *inter alia*, Directive of the European Parliament and of the European Council of 4 December 2001 amending Council Directive on prevention of the use of the financial system for the purpose of money laundering, and partly the special counter-terrorist recommendations of the FATF concerning the prevention of the financing of terrorism.

The most relevant amendment is the extension of the scope of the Act, whereby the reporting obligation will concern not only suspected cases of money laundering but also suspicions of financing of terrorism. If there is a suspicion that transaction has a connection to the financing of terrorism the money does not need to originate from criminal activities. The Act will also apply to accountants, book-keepers, dealers and suppliers of valuables, auctioneers and persons assisting in legal matters through a business or professional practice, placing them under an obligation to report on suspicious transactions.

The FSA has a duty to ensure that the supervised entities consistently observe good banking practice and good securities market practice. The requirements of due diligence and prevention of money laundering are part of the risk management and internal controls of supervised entities, on which the FSA has focused in its supervisory action. The FSA carries out on-site inspection and supervisory visits to the supervised entities as often and as extensively as necessary to ensure that their operations and internal risk management and control systems are sufficiently advanced so that internal and external criminal activities can be identified and prevented at an early stage. In this connection it also monitors compliance with international financial sanctions. The FSA has raised financial institutions' awareness of sanctions by arranging seminars and panel discussions and by keeping close contact with the representatives of the financial institutions and other authorities. The FSA is also obliged to inform the Money Laundering Clearing House if it finds that the operations of a supervised entity give reason to suspect negligence with regard to the provisions of the Money Laundering Act.

The working group set up by the Ministry of the Interior, to review the existing legislation and to make recommendations on how the enhance the control of fundraising by organizations which have charitable, social or cultural goals, will most likely be able to give its report before the end of the year so that a Government Bill may be submitted to Parliament in 2004.

(Question 12 and 13) So far, no funds relating to the persons and entities designated pursuant to UNSC resolutions 1267(1999), 1333(2001) and 1390(2002) have been found in Finland. Despite occasional similarities between the names of some bank clients and those of designated individuals, further investigation has not justified the freezing of funds.

IV. Travel ban

(Question 15) The attached Council Common Position 2002/402/CFSP obliges the Member States of the EU, *inter alia*, to take the necessary measures to prevent the entry into, or transit through, their territories of individuals referred to in Article 1 under the conditions set out in paragraph 2(b) of the Security Council Resolution 1390(2002).

(Question 16, 17 and 19) The Ministry for Foreign Affairs has informed the visa-issuing officials as well as the Finnish Frontier Guard of their obligations under the above-mentioned Common Position and SC Resolution 1390(2002) as well as the amendments to the list of designated individuals. The names of the designated individuals have been included into national electronic visa register to which the Finnish Frontier Guard also has access.

(Question 18) The names of the designated individuals have been checked and verified through the relevant registers of the Finnish Frontier Guard. So far, enlisted individuals have not been found or apprehended at the Finnish borders. However, the Frontier Guard has found a few close hits, mainly due to the inadequate identifying information concerning designated persons with a common name. These cases were further examined in co-operation with the Security Police.

V. Arms embargo

(Questions 20, 22 and 23) The Common Position (2002/402/CFSP, adopted 27 May 2002) of the Council of the EU prohibits the direct or indirect supply, sale and transfer, to the individuals designated by the Committee established pursuant to the resolution 1267(1999), of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, from the territories of the European Union Member States, or using their flag vessels or aircraft, or by nationals of the EU Member States outside their territories, under the conditions set out in SC Resolution 1390(2002).

The Common Position, together with the Council Regulation No 881/2002, also prohibits the granting, selling, supply or transfer, directly or indirectly, of technical advice, assistance or training related to military activities, including in particular training and assistance related to the manufacture, maintenance and use of arms and related materiel of all types, to any natural or legal person, group or entity designated by the SC Committee.

In Finland, the arms embargoes imposed by the UNSC or the EU are implemented by virtue of the Act on the Export and Transit of Defence Materiel (Act No 242/1990, as amended by Acts 197/1995 and 900/2002). According to the act, export, transit or brokering of defence materiel is subject to specific authorisation (export license and brokerage permit, respectively). The requirement of a brokerage permit was added to the Act with effect as from 1 December 2002. Finnish citizens, corporations or foreign citizens considered permanent residents of Finland are required to have a brokerage licence to engage, outside Finnish territory, in the brokerage of defence materiel between third countries.

A licence to export or broker shall not be granted if it jeopardizes Finland's security or is inconsistent with Finland's foreign policy. The General Guidelines for Export and Transit of Defence Materiel adopted by the Government (474/1995, as amended by Government decision 1000/2002) provide for the rules to be followed when granting an export licence or licence to transhipment of defence materiel. Annexes 2.1.2. and 2.1.3. to the Guidelines state that economic sanctions and arms embargoes imposed by binding resolutions of the United Nations Security Council or by the EU, respectively, shall be complied with. The arms embargo against Usama bin Laden, al-Qaida and Taliban, as set out in the SC Resolution 1390(2002), and Common position (2002/402/CFSP, are included in the annexes to the above-mentioned guidelines.

(Question 21) According to Section 7 of the Act on the Export and Transit of Defence Materiel, a person who commits an export crime shall be fined or imprisoned for a maximum period of four years. As for the obligations originating from the Regulation, the Sanctions Act is also applicable.

In addition to the grounds for the issue of an export licence laid down in the Act on the Export and Transit of Defence Materiel, Finland applies the EU Code of Conduct for Arms Exports which specifically requires the EU Member States to take into account, *inter alia*, the record of the buyer country with regard to its support for or encouragement of terrorism and international organized crime. In assessing the impact of the proposed export on the importing country and the risk that exported goods might be delivered to an undesirable end-user, the risk of the arms being re-exported or delivered to terrorist organizations is taken into account.

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Security Council

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Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 16 April 2003 from the Chargé d'affaires a.i. of the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

On instructions from my Government, I have the honour to submit the report of South Africa pursuant to paragraph 6 of Security Council resolution 1455 (2003) to the Security Council Committee established pursuant to resolution 1267 (1999) (see annex).

The Government of South Africa wishes to convey to the Committee its support for and cooperation with the ongoing work of the Committee.

I should be grateful if you would circulate the present letter and the enclosed report as a document of the Security Council.

(*Signed*) Jeanette **Ndhlovu**
Chargé d'affaires a.i.

03-35246 (E) 200503

Annex to the letter dated 16 April 2003 from the Chargé d'affaires a.i. of the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

Report of South Africa pursuant to paragraph 6 of Security Council resolution 1455 (2003)*

Introduction

On 16 April 2002, the South African Government submitted a comprehensive report to the Security Council Committee established pursuant to resolution 1267 on the measures taken to implement the provisions of resolutions 1267 (1999), 1333 (2002) and 1390 (2002). (See document S/AC.37/2002/12).

This report covers information and the measures on which Member States are required to submit an updated report to the 1267 Committee, as required in paragraph 6 of resolution 1455 (2003). As such it should be read in conjunction with the information already provided to the Committee in the South African Government's report of 16 April 2002.

The format and details of the individuals and entities that were listed by the UN Security Council 1267 Committee remains an obstacle to the full implementation of the relevant provisions of resolutions 1390 (2002) and 1455 (2003). In its present form, the list makes it difficult for implementing agencies to make positive identifications. To make the list more effective, additional information in respect of individuals listed - including full names, aliases, alternative spellings of their names and aliases, identification and/or passport numbers etc. - should be provided to facilitate positive identification.

The South African Security Community is also presently conducting investigations under certain provisions of the resolutions mentioned above, whose contents may not be divulged in order not to compromise investigations.

* The response to question 3 is available for consultation in the files of the Secretariat.

Additional information submitted regarding the implementation of operative paragraph 2 (a) to (c) of Security Council resolution 1390 (2002)

Question 1: What legislative and/or administrative measures have been taken to freeze the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list mentioned in paragraph 2 of resolution 1390 (2002), including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and to ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory?

Response:

The South African Government provided a comprehensive report (which has been published as document S/AC.37/2002/12) on the legislative and/or administrative measures to give effect to the measures contained in paragraph 2 (a) of resolution 1390 (2002). Updated information is provided in respect of the following:

A. Legislation:

1(a) Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)

The Financial Intelligence Centre (FIC) Act was adopted by the South African Parliament on 6 November 2001 and was assented to by the President on 28 November 2001. Certain provisions, including those establishing the Financial Intelligence Centre, took effect on 31 January 2002. A process is currently underway to draft regulations that will support the operation of the other provisions of this Act. It is envisaged that the majority of these provisions, which include provisions concerning the reporting of suspicious and unusual transactions, will take effect during the course of this year.

The Act draws extensively on international best practice and provides the South African Government with the tools to combat all money laundering activities, including activities related to acts of terrorism. It sets up an anti-money laundering regime which encourages voluntary compliance and self-regulation by institutions which otherwise may be exploited for money laundering purposes. To this extent, the FIC Act complements the Prevention of Organised Crime Act of 1998. The Act is attached as Addendum F to South

Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

The regulations under the Financial Intelligence Centre Act, 2001, were published in the Government Gazette on 20 December 2002. These regulations provide the detail concerning the duties of client identification, record-keeping, reporting of information and implementing internal rules which are created by the Financial Intelligence Centre Act, 2001.

The regulations relating to the reporting of suspicious and unusual transactions took effect on 3 February 2003. On this date the sections of the Financial Intelligence Centre Act, 2001 requiring suspicious and unusual transactions to be reported to the Financial Intelligence Centre and enabling the Financial Intelligence Centre to perform its functions in respect of such reports also took effect. As a result the Financial Intelligence Centre is now functioning in an operational capacity, receiving, processing, analysing and disseminating information on suspicious and unusual transactions. A further consequence is that reports on suspicious transactions are no longer made to the South African Police Services under the Prevention of Organised Crime Act, 1998, but rather to the FIC in terms of the Financial Intelligence Centre Act.

No reports concerning the Taliban/Al-Qaeda or any individuals or entities associated with them have been made to the Financial Intelligence Centre since 3 February 2003 when the obligation under the Financial Intelligence Centre Act, 2001, to report suspicious and unusual transactions to the Centre took effect. Likewise no such reports were made to the South African Police Service in the period preceding 3 February 2003 when such reports were made to the South African Police Service under the Prevention of Organised Crime Act, 1998.

The sections of the Financial Intelligence Centre Act, 2001 and the regulations dealing with the duties of client identification, record-keeping and implementing internal rules will take effect on 30 June 2003.

1(b) Anti-Terrorism Bill

The South African Department of Safety and Security initiated a review of the South African law dealing with terrorism. This review resulted in a draft Anti-Terrorism Bill which Cabinet approved for introduction to Parliament in November 2002. On 29 January 2003, the parliamentary Portfolio Committee on Safety and Security in the National Assembly was given its first briefing on the Bill. It is envisaged that the Portfolio Committee will start its deliberations on the Bill during March 2003.

The text of the draft Bill is presently available at:

- The South African Law Commission's website at:
  http://www.server.law.wits.ac.za/salc/report/report.html

- Unwembi's Resource of South African Government Information at: http://www.polity.org.za/govdocs/bills/2002/index.html

- The South African Police Service's website at: http://www.saps.org.za/legis/index.htm#anti-terror

- The South African Parliament's website at: http://www.pmg.org.za/bills/020902terrorismbill.html

One of the measures contained in the Anti-Terrorism Bill is the authority of the Minister for Safety and Security, by notice in the Government Gazette, to declare an organisation to be a proscribed organisation, if he or she is satisfied on reasonable grounds, inter alia, that the declaration is reasonably appropriate to give effect to a decision of the Security Council of the United Nations that the organisation is an international terrorist organisation. The Bill also criminalises the contributing to the activities of a terrorist organisation, which includes, inter alia, -

> providing, receiving or recruiting a person to receive training;
>
> providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist organisation;
>
> collecting, providing, or making available property or inviting a person to provide, facilitate or make available property or financial or other related services on behalf of such an organisation;
>
> using property on behalf of such an organisation;
>
> possessing property intending that it be used on behalf of such an organisation;

The Bill also criminalises the dealing in property for terrorist purposes. It provides that any person, whether within or outside the Republic who knowingly –

> (a) deals directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist organisation;
>
> (b) enters into or facilitates any transaction in respect of property referred to in paragraph (a); or
>
> (c) provides any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of a terrorist organisation,
>
> is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 15 years.

The Bill also creates an elaborate procedure for search, seizure and forfeiture of such property.

B. Conventions:

In paragraph 1(e) of report S/AC.37.2002/12, on the Transnational Organised Crime Convention, it is envisaged that the Convention and its Protocols will be ratified by Parliament during 2003.

In paragraph 1 (f), referring to the International Convention for the Suppressing of the Financing of Terrorism, it should be noted that the Minister of Foreign Affairs signed the Instrument of Ratification for this Convention on 27 March 2003.

The Minister of Foreign Affairs signed the Instrument of Ratification for the International Convention for the Suppression of Terrorist Bombings on 4 April 2003.

Arrangements are being made for the deposition of these instruments of ratification with the Secretary-General of the United Nations.

The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, and the International Convention Against the Taking of Hostages are currently going through the constitutional processes for their ratification.

C. Administrative Action:

Amendments have been made to paragraph 1 (g) regarding the imposition of financial restrictions imposed against the Taliban, Al-Qaeda and associated groups and entities. Since the submission of South Africa's National Report on resolution 1390 (2002)(S/AC/37/2002/12), three additional Exchange Control Circulars have been circulated advising all authorised dealers that, due to UN sanctions, they are not allowed to make any funds and/or financial or economic resources available to the Taliban, as well as to Usama bin Laden and individuals associated with him. The Exchange Control Circulars have also requested all Authorised Dealers in foreign exchange to report any facilities or assets of this nature that may have been in place before the sanctions were imposed, as well as any future attempts by the private sector to enter into transactions with the prohibited parties and persons. The Exchange Control Circulars in question are No D.358 of 4 April 2002, No D.368 of 20 August 2002 and No D.374 of 28 January 2003. These additional Exchange Control Circulars, D.358, D.368 and D.374 contained the details of the individuals and entities that were listed by the Security Council Committee on Afghanistan.

All reports received to date indicate that the authorised dealers do not have any assets of the individuals or entities stipulated in the lists of the Sanctions Committee on Afghanistan on their books, or under their control, and that no facilities were granted to them.

1(a) Financial restrictions imposed against organisations, entities and individuals identified as being associated with terrorist acts or terrorist organisations

Regarding the information contained in paragraph 1 in the South African Government's report of 16 April 2002 (document S/AC.37/2002/12), it should be noted that the information that was to be supplied to the Registrar of Banks by 28 March 2002 and thereafter on a quarterly basis, is now provided on a bi-annual basis.

The following developments on the Cross-Border Foreign Exchange Transaction Reporting System can be reported since the submission of Report S/AC.37/2002/12.

The Cross-Border Foreign Exchange Transaction Reporting System was introduced on 1 April 2001. The International Monetary Fund, in its publication on reporting systems, pointed out, that in view of a movement towards a global marketplace, there is clearly a need for an international standard to be adopted for central bank reporting. Such a standard, known as EDIFACT has been developed under auspices of the United Nations. South Africa has decided to align with the worldwide trend by adopting the EDIFACT standard. The purpose of the Cross-Border Foreign Exchange Transaction Reporting System is to provide relevant, accurate and timeous information on cross-border transactions and payment flows.

It requires all cross-border transactions to be reported. The Reporting System is based on the principle of "same source" reporting which requires the extraction of relevant data from the Authorised Dealers' accounting processes e.g. nostro/vostro administration. The completion of, *inter alia*, the surname and name of an individual or entity is a mandatory requirement. In the case of an individual, the surname of the individual should be supplied and in the case of an entity, the registered name of the entity must be supplied. It is therefore possible by continuous data mining exercises to determine whether any cross border transactions concluded by listed individuals and entities have taken place. Excon is in the process of introducing enhanced data mining software that would streamline the identification process. To date approximately 12 million transactions have been captured on the system. Investigations, including on-site visits, have been conducted by Excon to verify possible transactions involving individuals and entities listed by the United Nations Security Council Committee. None of the individuals or entities was positively identified to date.

Excon is providing assistance to its neighbouring territories i.e. Namibia, Swaziland, Lesotho and Zimbabwe to implement similar systems.

All transactions that could potentially be construed as a contravention of the resolutions are investigated intensively in terms of origins of funds, ownership, trail of funds and recipients thereof.

Research is done on a continuous basis to trace any transactions alleged to be involved in the financing of terrorist acts. The results are communicated to the South African Police

Service, who then conducts an investigation into the matter. The authorisation process at the Exchange Control Department includes an electronic system that will automatically prevent approval of applications where any of the names listed in the Circulars mentioned above are involved. The Exchange Control Department has received no applications of this nature to date.

Question 2: What measures have been taken to prevent the entry into or transit through South African territory of the individuals referred to in the list mentioned in paragraph 2 of resolution 1390 (2002)?

Response:

Paragraph 2 (c) "Implementing Mechanisms" of South Africa's Report S/AC.37/2002/12 outlined the activities of the National Joint Operational Committee (NATJOC).

The existence of NATJOC was terminated in 2002 for practical reasons. It was decided that in order to have more effective and targeted co-operation, liaison on matters of counter-terrorism would take place between those role players directly involved as an when required.

Please note that the response to Question 3 is contained in a Confidential Annex.

Question 4: What measures have been taken to prevent the direct or indirect supply, sale and transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities?

Response:

The information pertaining to Question 4 in Report S/AC/37/2002/12 regarding the direct or indirect supply of arms and related materiel to the individuals, groups, undertakings and entities specified by resolution 1390 (2002) remains unchanged.

There are currently investigations being conducted in terms of the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), whose contents cannot be divulged at the present time in order not to compromise investigations.

4(f) Civil Aviation Offences Act, 1972 (Act No. 10 of 1972)

It should be noted that the Minister of Transport on 18 March 2002 approved the interim National Safety Plan (NSP) mentioned in paragraph 4 (f) of Report S/AC.37/2002/12.

Question 5: Updated information regarding all related investigations and enforcement actions, including a comprehensive summary of frozen assets of listed individuals and entities within Member State territories.

Response:

The South African Security Community is presently conducting investigations under certain provisions of resolutions 1267 (1999), 1333 (2000) and 1390 (2001), whose contents may not be divulged in order not to compromise investigations underway.